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No. 99-387

In the Supreme Court of the United States

THOMAS E. RALEIGH, CHAPTER 7 TRUSTEE
FOR ESTATE OF WILLIAM J. STOECKER, PETITIONER

v.

STATE OF ILLINOIS DEPARTMENT OF REVENUE

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the burden of proof for a tax claim, which rests upon the taxpayer as a matter of substantive law, is shifted to the government when that claim is litigated in the taxpayer's bankruptcy case.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	6
Argument:	
The Bankruptcy Code does not alter the substantive rules that govern the burden of proof for tax claims	8
Conclusion	24

TABLE OF AUTHORITIES

Cases:

Ahlswede, In re, 516 F.2d 784 (9th Cir.), cert. denied, 423 U.S. 913 (1975)	23
Andover Togs, Inc., In re, 231 B.R. 521 (Bankr. S.D.N.Y. 1999)	15
BFP v. *Resolution Trust Corp.*, 511 U.S. 531 (1994)	7, 11
Bird v. *Carl's Grocery Co. (In re NWFX, Inc.)*, 864 F.2d 593 (8th Cir. 1989)	23
Branson v. *Department of Revenue*, 659 N.E.2d 961 (Ill. 1995)	10
Bull v. *United States*, 295 U.S. 247 (1935)	8, 11, 13
Butner v. *United States*, 440 U.S. 48 (1979)	10, 23
Cities Serv. Oil Co. v. *Dunlap*, 308 U.S. 208 (1939)	11
City of New York v. *Saper*, 336 U.S. 328 (1949)	16, 17, 19
Dewsnup v. *Timm*, 502 U.S. 410 (1992)	21
Dick v. *New York Life Ins. Co.*, 359 U.S. 437 (1959)	11
Dickinson v. *Riley*, 86 F.2d 385 (8th Cir. 1936)	20
Director v. *Greenwich Collieries*, 512 U.S. 267 (1994)	11
Farris, In re, 194 B.R. 931 (Bankr. E.D. Pa. 1996)	15
Fiori v. *Rothensies*, 99 F.2d 922 (3d Cir. 1938)	20

Cases—Continued: Page

Franchise Tax Board of California v. *MacFarlane (In re MacFarlane)*, 83 F.3d 1041 (9th Cir. 1996), cert. denied, 520 U.S.1115 (1997) 3, 5, 11
Grogan v. *Garner*, 498 U.S. 279 (1991) 10
Helvering v. *Taylor*, 293 U.S. 507 (1935) 8
Highway Constr. Co. of Ohio, In re, 105 F.2d 863 (6th Cir. 1939) 20
Johns-Manville Corp., In re, 57 B.R. 680 (Bankr. S.D.N.Y. 1986) 19
Landbank Equity Corp., In re, 973 F.2d 265 (4th Cir. 1992) 5, 22, 23
Lang Body Co., In re, 92 F.2d 338 (6th Cir. 1937), cert. denied, 303 U.S. 637 (1938) 20
Lapriano, In re, 909 F.2d 221 (7th Cir. 1990) 5, 23
Morristown & Erie R.R., In re, 885 F.2d 98 (3d Cir. 1989) 23
Nicholas v. *United States*, 384 U.S. 678 (1966) 16, 20
Norwest Bank Worthington v. *Ahlers*, 485 U.S. 197 (1988) 23
Paschal v. *Blieden*, 127 F.2d 398 (8th Cir. 1942) 20
Plisco v. *United States*, 306 F.2d 784 (D.C. Cir. 1962), cert. denied, 371 U.S. 948 (1963) 9
Uneco, Inc., In re, 532 F.2d 1204 (8th Cir. 1976) 20
Unioil, Inc., In re, 962 F.2d 988 (10th Cir. 1992) 15
United States v. *Janis*, 428 U.S. 433 (1976) 9
United States v. *Noland*, 517 U.S. 535 (1996) 8, 23, 24
United States v. *Rexach*, 482 F.2d 10 (1st Cir.), cert. denied, 414 U.S. 1039 (1973) 8-9
United States v. *Sampsell*, 224 F.2d 721 (9th Cir. 1955) 20
United States v. *Sutton*, 786 F.2d 1305 (5th Cir. 1986) 23
Vanston Bondholders Protective Comm. v. *Green*, 329 U.S. 156 (1946) 10, 11, 23
Welch v. *Helvering*, 290 U.S. 111 (1933) 8

Cases—Continued: Page

Woehr, In re, 121 B.R. 743 (N.D. Tex. 1990), aff'd, 957 F.2d 867 (5th Cir. 1992) 15
Yoder Co., In re, 758 F.2d 1114 (6th Cir. 1985) 22

Statutes and rules:

Bankruptcy Code, 11 U.S.C. 101 *et seq.*:
11 U.S.C. 58(d) 17
11 U.S.C. 93(a) (1939) 17
11 U.S.C. 93(d) (1939) 17, 18
11 U.S.C. 93(n) (1939) 18
11 U.S.C. 362(g) 12
11 U.S.C. 363(o) 12
11 U.S.C. 364(d)(2) 12
11 U.S.C. 502 11
11 U.S.C. 505 11
11 U.S.C. 507(a)(8) 14
11 U.S.C. 521(4) 12-13
11 U.S.C. 547(g) 12
11 U.S.C. 701 *et seq.* (Ch. 7) 2
11 U.S.C. 704(7) 13
11 U.S.C. 1101 *et seq.* (Ch. 11) 2
11 U.S.C. 1129(d) 12
Chandler Act of 1938, ch 575, 52 Stat. 840 17
Internal Revenue Service Restructing and Reform Act of 1998, Pub. L. No. 105-206, Tit. III, § 3001(a), 112 Stat. 727 (to be codified) 9
26 U.S.C. 7491 ..... 9, 10
26 U.S.C. 7491(a) 9, 10
26 U.S.C. 7491(a)(1) 9
28 U.S.C. 1341 4
28 U.S.C. 2075 22
Ill. Rev. Stat. ch. 120 (Smith-Hurd 1989):
para. 439.3 2
para. 439.10 2
35 Ill. Comp. Stat. Ann. 735/3-7 (West 1999) 3

Rules—Continued:	Page
Fed. R. Bankr. P.:	
Rule 3001(f)	7, 21, 22
Rule 4002	13
Fed. R. Evid.:	
Rule 301	8, 22
Rule 1101(a)	22
Tax Ct. R. 142(a)	8
Miscellaneous:	
Collier on Bankruptcy (15th ed. rev. 1999):	
Vol. 3A (14th ed. 1975)	18
Vol. 6	13
Vol. 9	13
H.R. Rep. No. 595, 95th Cong., 1st Sess. (1978)	14, 21
H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. (1998)	9, 10
James Moore, *Moore's Bankruptcy Manual* (1939)	18-19
S. Rep. No. 174, 105th Cong., 2d Sess. (1998)	9, 10, 21
S. Rep. No. 989, 95th Cong., 2d Sess. (1978)	21
S. Rep. No. 1916, 75th Cong., 3d Sess. (1938)	18, 19
21 Charles Alan Wright & Kenneth W. Graham, *Federal Practice and Procedure* (1977)	11

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INTEREST OF THE UNITED STATES

The Internal Revenue Service files more than 100,000 proofs of claim in bankruptcy cases each year seeking to recover several billion dollars of taxes. It has long been the general rule in litigation contesting tax liabilities that the taxpayer bears the burden of proof. The question presented in this case is whether that burden of proof is placed instead on the taxing authority merely because the tax case is litigated in bankruptcy court. That question is one of substantial recurring importance in the administration of the federal tax laws.

STATEMENT

1. William Stoecker was the president and sole director of Chandler Enterprises, Inc., an Illinois corporation. That corporation purchased an airplane from an out-of-state seller in 1988. Pet. App. B2. The State of Illinois imposes a use tax on Illinois residents "upon the privilege of using in this State tangible personal property" whether such property is purchased in Illinois or elsewhere. Ill. Rev. Stat. ch. 120, ¶ 439.3 (Smith-Hurd 1989). Retailers in Illinois, and foreign retailers with an adequate nexus to Illinois, are required to collect and pay over that tax to Illinois. *Ibid.* Any tax "not paid to a retailer * * * shall be paid to the Department [of Revenue] directly by any person using such property within [Illinois]." *Ibid.* A purchaser whose seller does not pay the use tax is thus to file a return with the Department of Revenue and pay the tax. *Id.* ¶ 439.10. In this case, however, neither Chandler Enterprises nor the out-of-state seller of the airplane filed an Illinois use tax return or paid the Illinois use tax. Pet. App. B2-B3.

2. In 1989, the creditors of Mr. Stoecker initiated involuntary bankruptcy proceedings against him under Chapter 11 of the Bankruptcy Code. The bankruptcy case was later converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code. Pet. App. C12. While the bankruptcy case was pending, the Illinois Department of Revenue issued a Notice of Tax Liability to Chandler Enterprises for the unpaid use tax on the airplane. The corporation had been involuntarily dissolved, however, and thus did not pay the use tax. *Id.* at B2-B3.

Under Illinois law, a corporate officer "who has the control, supervision or responsibility of filing returns

and making payment of the amount of any * * * tax * * * who wilfully fails to file the return or make the payment * * * shall be personally liable for a penalty equal to the total amount of tax unpaid by the [corporation]." 35 Ill. Comp. Stat. Ann. 735/3-7 (West 1999). Invoking that provision, the Illinois Department of Revenue issued a Notice of Penalty Liability asserting that Mr. Stoecker was personally liable for the unpaid taxes of the corporation. Pet. App. B2-B3, C20-C21. The State thereafter filed a proof of claim in the amount of $911,769 in Mr. Stoecker's bankruptcy case. *Id.* at C20 & n.12.

3. The bankruptcy court upheld the trustee's objection to the State's claim. Pet. App. C1-C81. Relying on *Franchise Tax Board of California* v. *MacFarlane*, 83 F.3d 1041, 1045 (9th Cir. 1996), cert. denied, 520 U.S. 1115 (1997), the bankruptcy court concluded that the State had the burden of proof on its tax claim because "the ultimate burden of persuasion always remains with the claimant to prove entitlement to the claim." Pet. App. C5. The court held that the Department's notice of liability and proof of claim constituted "prima facie proof as to all elements of [the tax] liability" and that "[t]he burden then shifted to the Trustee to rebut the presumption created by" the notice. *Id.* at C73. The court stated, however, that the trustee had properly rebutted that presumption by "showing that the Debtor was not in control [of the corporation] and thus could not have voluntarily or willfully failed to pay the tax." *Ibid.* The court held that "[t]he ultimate burden of proof then shifted back" to the State to show that its claim should be allowed. *Ibid.* The court ruled against the State because it failed to "refute" the debtor's evidence "and to ultimately sustain its burden of proof * * * ." *Id.* at C74.

4. The district court affirmed. Pet. App. B1-B21. The court first held that it was barred by 28 U.S.C. 1341 from reviewing the State's determination that the corporation was liable for the use tax. Pet. App. B13-B16. That statute deprives the district courts of jurisdiction to enjoin or restrain the assessment or collection of state taxes when a plain, speedy, and adequate remedy may be had in the state courts. 28 U.S.C. 1341. The district court concluded that this statute barred it from reviewing the validity of the state tax assessment against the corporation. With respect to the State's claim against the debtor in his individual capacity, however, the court held that the State bore the burden of proof. Pet. App. B8. The court sustained the conclusion of the bankruptcy court that the State failed to meet that burden by showing that the debtor had control, supervision, or responsibility for paying the use tax liability of the corporation. *Id.* at B9-B12.

5. The court of appeals reversed. Pet. App. A1-A13. The court of appeals rejected the conclusion of the district court that 28 U.S.C. 1341 bars federal courts from reviewing the tax liability of the corporation in this bankruptcy case. On the merits, however, the court of appeals concluded that the state tax had been lawfully assessed upon the corporation. Pet. App. A7.

Having thus reached the question of the debtor's individual liability for that tax, the court of appeals stated that there was "no proof either that [the debtor] was responsible for" filing Chandler's tax returns or paying Chandler's taxes "or that he willfully evaded the payment of the use tax." Pet. App. A7. The court concluded, however, that "just as under the corresponding federal law of responsible-officer liability for unpaid taxes, 26 U.S.C. § 6672 * * * , Illinois shifts the burden of proof—both production and persuasion—to

the officer once a Notice of Penalty Liability is issued, * * * and the trustee has not carried it." Pet. App. A7. The court stated that, while the debtor "may have satisfied his burden of production by identifying" another individual as the "corporate financial officer, * * * he has not satisfied the burden of persuasion." *Id.* at A7-A8. Noting that the proper allocation of the burden of proof "is critical" to resolution of this case, the court of appeals held that the debtor was liable for the tax. *Id.* at A8.

The court of appeals rejected the trustee's argument that "equity" requires the burden of proof for tax claims to be placed on the government in bankruptcy cases. Pet. App. A9. The court stated that "[b]ankruptcy is not a 'free-for-all equity balancing act.'" *Ibid.* (quoting *In re Lapriano*, 909 F.2d 221, 223 (7th Cir. 1990)). Instead, "it is now well settled that although the origins, procedures, and many of the remedies of bankruptcy are indeed equitable, a bankruptcy judge has no authority to cut down the entitlements that creditors seek to enforce in bankruptcy, except * * * as provided by the Bankruptcy Code itself." Pet. App. A9. The court concluded that "[b]urden of proof is rightly classified as a part of the creditor's entitlement" that "is not shifted in bankruptcy." *Id.* at A10.

The court of appeals acknowledged that the decision of the Ninth Circuit in *Franchise Tax Board of California* v. *MacFarlane*, 83 F.3d at 1045, conflicts with the decision in this case. The court concluded, however, that the view adopted here and in *In re Landbank Equity Corp.*, 973 F.2d 265, 270 (4th Cir. 1992), is preferable because (Pet. App. A10):

> [i]t is supported by the general pattern of American tax law, in which "payment precedes defense, and

> the burden of proof, normally on the claimant, is shifted to the taxpayer," *Bull v. United States*, 295 U.S. 247, 260 (1935), and by the countless cases which hold that burden of proof is "substantive" for purposes of the Erie doctrine, e.g., *Director v. Greenwich Collieries*, 512 U.S. 267, 271 (1994); *American Dredging Co. v. Miller*, 510 U.S. 443, 454 (1994) * * * .

The court of appeals noted that, although Congress could have provided a different result for tax claims in bankruptcy cases, there is no indication that it sought to do so. The court observed that, while close attention was paid to issues of burden of proof in several provisions of the Bankruptcy Code, the Code is silent on the burden of proof in tax cases. Pet. App. A11. The court noted, moreover, that a rule shifting the burden of proof to the government on tax claims in bankruptcy cases would create an undesirable incentive for taxpayers to declare bankruptcy. *Ibid.* Concluding that the burden of proof rests on the taxpayer in this case—just as it would if the tax claim had been adjudicated outside of bankruptcy court—the court of appeals held that "the state has a valid claim * * * and that the decision of the district court must therefore be reversed." *Id.* at A12.

SUMMARY OF ARGUMENT

The proper allocation of the burden of proof is a substantive rule governed by the law that creates the underlying claim. The State of Illinois follows the traditional rule that allocates the burden of proof on tax claims to the taxpayer. The court of appeals correctly held that this substantive rule of Illinois law is not abridged—and that the burden of proof on Illinois tax

claims is not placed on the State—simply because the tax claim is litigated in bankruptcy court.

Except when Congress expressly provides otherwise, the substantive rules that allocate the burden of proof for a creditor's claim in non-bankruptcy cases also govern in bankruptcy proceedings. Nothing in the Bankruptcy Code expressly shifts the burden of proof to the taxing authority on tax claims litigated in bankruptcy court. To the contrary, while the Bankruptcy Code does contain several provisions that, in other contexts, explicitly address the burden of proof, there is nothing in the Code that establishes the "clear and manifest" intent (*BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 544 (1994)) required to displace the State's substantive rules governing the burden of proof on tax claims.

The legislative history of the Bankruptcy Code, and the prior practice under the Bankruptcy Act, also do not support petitioner's contention. The case law under the Bankruptcy Act had reached conflicting results. Some courts had concluded that the burden of proof shifts to the taxing authorities in bankruptcy; others had concluded that the burden was retained by the debtor. In this context, it cannot plausibly be suggested that congressional silence on the allocation of the burden of proof was intended to adopt any particular view.

Nor does Bankruptcy Rule 3001(f) prescribe a burden of proof on claims in bankruptcy. It provides only that the proof of claim executed by the claimant is "prima facie evidence" of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). That Rule does not purport to prescribe the ultimate burden of proof to be applied when the "prima facie" case established by the proof of claim is disputed by an objection in bankruptcy

court. This Bankruptcy Rule is subject to Rule 301 of the Rules of Evidence, which specifies that such a presumption merely imposes a "burden of going forward with evidence" "to rebut or meet the presumption" and "does not shift * * * the burden of proof in the sense of the risk of nonpersuasion." Fed. R. Evid. 301.

Petitioner also errs in suggesting that bankruptcy courts, as courts of equity, may disregard the substantive rules governing burden of proof established under non-bankruptcy law. Bankruptcy courts may not "contradict [the] statutory or common law" placing the burden of proof on taxpayers simply by invoking an "unrestricted power" to achieve "a fairer result" (*United States* v. *Noland*, 517 U.S. 535, 543 (1996)).

ARGUMENT

THE BANKRUPTCY CODE DOES NOT ALTER THE SUBSTANTIVE RULES THAT GOVERN THE BURDEN OF PROOF FOR TAX CLAIMS

1. It has long been the settled rule that, except as Congress provides otherwise, the burden of proof in litigation involving federal tax liabilities rests on the taxpayer. As this Court stated in *Helvering* v. *Taylor*, 293 U.S. 507, 515 (1935), "[u]nquestionably the burden of proof is on the taxpayer to show that the commissioner's determination is invalid." Accord *Bull* v. *United States*, 295 U.S. 247, 260 (1935); *Welch* v. *Helvering*, 290 U.S. 111, 115 (1933).[1] The rule placing

[1] This allocation of the burden of proof historically applied whether the tax claim was litigated in Tax Court in a deficiency proceeding (Tax Ct. R. 142(a)), in district court or the Court of Federal Claims in a refund case (*Bull* v. *United States*, 295 U.S. at 260), or in a tax collection action brought by the government in district court (*United States* v. *Rexach*, 482 F.2d 10, 15-18 (1st Cir.), cert. denied, 414 U.S. 1039 (1973); *Plisco* v. *United States*, 306 F.2d 784, 786 & n.2 (D.C. Cir. 1962), cert. denied, 371 U.S. 948 (1963)). In *United States* v. *Janis*, 428 U.S. 433, 440 (1976), the Court stated, without deciding, that "[t]he policy behind the presumption of correctness and the burden of proof * * * would appear to be applicable" in tax collection suits and that allocating the burden to the taxpayer in such suits would "accord[] * * * with the burden-of-proof rule which prevails in the usual preassessment proceeding in the United States Tax Court."

the burden of persuasion on the taxpayer was first developed as a judge-made rule of common law and was thereafter "repeatedly considered and approved by Congress." H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 238 (1998); S. Rep. No. 174, 105th Cong., 2d Sess. 43 (1998).[2] The States have also, by either statute or

[2] Congress has recently added Section 7491 to the Internal Revenue Code to provide that, "in any court proceeding," the burden of proof on factual issues relevant to ascertaining the taxpayer's federal tax liability will rest with the United States *if* the taxpayer satisfies the following conditions: (i) the taxpayer "introduces credible evidence" on the issue; (ii) the taxpayer has complied with substantiation requirements imposed by the Internal Revenue Code; (iii) the taxpayer has "maintained all records" required by the Internal Revenue Code, and "has cooperated with reasonable requests" for witnesses, information, documents, meetings, and interviews; and, (iv) in the case of a partnership, corporation or certain trusts, the taxpayer's net worth does not exceed $7 million, and it has no more than 500 employees. Internal Revenue Service Restructing and Reform Act of 1998, Pub. L. No. 105-206, Tit. III, § 3001(a), 112 Stat. 727 (to be codified at 26 U.S.C. 7491(a)). This new provision applies only to court proceedings that arise in connection with examinations commenced after July 22, 1998, or, in a case in which no examination occurred, to court proceedings arising in connection with taxable periods beginning, or events occurring, after July 22, 1998.

The new rules of Section 7491 also apply only to taxes imposed by Subtitles A ("Income Taxes") and B ("Estate and Gift Taxes") of the Internal Revenue Code. 26 U.S.C. 7491(a)(1). This provision

common law, routinely adopted this traditional allocation of the burden of proof to the taxpayer. See Amici States Br. Supporting Cert. at 6 n.3. In particular, the traditional rule has long been followed by the State of Illinois. Pet. App. A7; *Branson* v. *Department of Revenue*, 659 N.E.2d 961, 968 (Ill. 1995).

The court of appeals correctly concluded that the burden of proof in tax cases is not shifted to the taxing authority simply because the tax issue arises in the bankruptcy context. The *validity* of a creditor's claim is governed by substantive state and federal non-bankruptcy law. *Grogan* v. *Garner*, 498 U.S. 279, 283-284 & n.9 (1991) (non-bankruptcy law governs the standard of proof that a creditor must satisfy to establish a valid claim in bankruptcy); *Butner* v. *United States*, 440 U.S. 48, 55 (1979); *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 161 (1946). Rules allo-

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thus does not alter the traditional rule which places the burden of proof on the taxpayer in proceedings involving other types of taxes, such as employment taxes and excise taxes. In order to shift the burden of proof to the government, the taxpayer bears the burden of proving that the conditions imposed by 26 U.S.C. 7491 have been satisfied. If the taxpayer fails to sustain that burden, the ultimate burden of proof remains with the taxpayer. See S. Rep. No. 174, *supra*, at 45; H.R. Conf. Rep. No. 599, *supra*, at 242.

Even after enactment of Section 7491, the proper allocation of the burden of proof with respect to federal tax claims in bankruptcy proceedings thus remains of substantial importance to the United States. It is precisely in instances in which the taxpayer has *not* complied with the substantiation rules or has not cooperated with an investigation that the government would incur the greatest prejudice from bearing the burden of proof on tax claims in bankruptcy cases. Congress recognized that fact by leaving the burden of proof on the taxpayer in those situations "in any court proceeding." 26 U.S.C. 7491(a).

cating the burden of proof are part of the substantive law that governs a creditor's claim. *Director* v. *Greenwich Collieries*, 512 U.S. 267, 271 (1994) ("the assignment of the burden of proof is a rule of substantive law"); *Dick* v. *New York Life Ins. Co.*, 359 U.S. 437, 446 (1959); *Cities Service Oil Co.* v. *Dunlap*, 308 U.S. 208, 212 (1939). Except when Congress expressly provides otherwise, the substantive rules that allocate the burden of proof for a creditor's claim in non-bankruptcy cases therefore also govern in bankruptcy proceedings. See *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. at 161; 21 C. Wright & K. Graham, *Federal Practice and Procedure* § 5122 (1977). See also note 2, *supra*. The substantive rule of Illinois law, under which "the burden of proof, normally on the claimant, is shifted to the taxpayer" (*Bull* v. *United States*, 295 U.S. at 260), therefore governs in bankruptcy cases involving Illinois tax claims in the absence of a contrary federal statutory rule.

Petitioner acknowledges (Pet. Br. 7-8, 15) that the court of appeals correctly concluded (Pet. App. A11) that nothing in the Bankruptcy Code explicitly shifts the burden of proof to the taxing authority for tax claims adjudicated in bankruptcy court. See also *Franchise Tax Board of California* v. *MacFarlane*, 83 F.3d at 1045 ("[t]he bankruptcy code is silent on the allocation of the ultimate burden of proof" in tax disputes). Neither Section 502 of the Bankruptcy Code, which governs the allowance of claims generally, nor Section 505, which authorizes the bankruptcy courts to adjudicate tax disputes, contains any provision addressing or allocating the burden of proof. See 11 U.S.C. 502, 505. There is thus nothing in the Bankruptcy Code that establishes the "clear and manifest" intent (*BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 544 (1994)) that is re-

quired to displace substantive state and federal rules governing the burden of proof in the adjudication of tax claims.

As the court of appeals noted in this case (Pet. App. A11), the Bankruptcy Code *does* contain several provisions that, in other contexts, explicitly address the burden of proof. See, *e.g.*, 11 U.S.C. 362(g) (assigning burden of proof to different parties on different issues in challenges to automatic stay); 11 U.S.C. 363(o) (assigning burden to trustee on issue of adequate protection of creditors in hearing on use of creditor's property); 11 U.S.C. 364(d)(2) (assigning burden to trustee on issue of adequate protection in hearing on obtaining new credit); 11 U.S.C. 547(g) (assigning burden to trustee seeking to avoid certain allegedly preferential transfers); 11 U.S.C. 1129(d) (assigning burden to government of proving claim of tax avoidance as principal purpose of plan). As the court of appeals emphasized, the careful attention that Congress thus gave to burden-shifting rules in the Bankruptcy Code makes the legislative "silence on the burden of proof in tax cases eloquent." Pet. App. A11.

2. Petitioner errs in suggesting (Pet. Br. 26-27 & n.10) that the allocation of the burden of proof in bankruptcy cases should vary depending on whether it is the taxpayer or a creditor of the taxpayer who disputes the government's tax claim. The Bankruptcy Code reflects no intention by Congress to grant to creditors who contest the validity of a tax claim rights that are superior to the rights of the tax debtor himself.[3] The identity of the party who contests the tax

[3] Unless the court orders otherwise, both bankruptcy trustees and non-governmental creditors have the right to obtain information needed to contest the debtor's tax liability. See 11 U.S.C. 521(4) (imposing a duty on the debtor to "surrender to the trustee * * * any recorded information, including books, documents, records, and papers, relating to property of the estate"); 11 U.S.C. 704(7) (requiring the trustee to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest"); Fed. R. Bankr. P. 4002 (imposing a duty on the debtor to "cooperate with the trustee in * * * the examination of proofs of claim"); 6 *Collier on Bankruptcy* ¶¶ 704.09[1], 704.11 (15th ed. rev. 1999); 9 *id.* ¶ 4002.05[2].

liability obviously has no bearing on the substantive question whether the debtor is in fact liable for the tax.

The general rule assigning the burden of proof on tax claims to the taxpayer stems from the government's "imperious need" for taxes, which are "the life-blood of government." *Bull* v. *United States*, 295 U.S. at 259. This need for prompt and efficient collection of tax revenues is not dissipated merely because the taxpayer has filed for bankruptcy. To the contrary, as the court of appeals emphasized (Pet. App. A11), shifting the burden of proof to the taxing authority in bankruptcy proceedings would simply make bankruptcy court a peculiarly favorable forum in which to dispute tax claims and thereby create an open invitation for abuse of the bankruptcy process. As the court emphasized (*ibid.*):

> The position for which the trustee contends * * * would create a new incentive to declare bankruptcy. We have enough bankruptcies.

The substantive rules of non-bankruptcy law that place the burden of proof for tax claims on the taxpayer have the salutary effect of requiring the taxpayer to maintain and produce appropriate records. See note 2, *supra*. By contrast, the opposite burden of proof rule for which petitioner contends would create a perverse

incentive for debtors to obstruct enforcement of tax claims simply by leaving their records in disarray. Neither logic nor the provisions of the Bankruptcy Code suggest that debtors should benefit at the expense of the public fisc from a failure to maintain and produce required tax records. The shifting of the burden of proof that petitioner proposes for tax claims litigated in bankruptcy court could yield inappropriate windfalls for tax protestors or others who seek to avoid tax debts in bankruptcy.

3. Congress has expressly granted priority to tax claims in bankruptcy cases. See, *e.g.*, 11 U.S.C. 507(a)(8). In doing so, the House Judiciary Committee explained that "[a] taxing authority is given preferred treatment [in bankruptcy] because it is an involuntary creditor of the debtor. It cannot choose its debtors, nor can it take security in advance of the time the taxes become due." H.R. Rep. No. 595, 95th Cong., 1st Sess. 189-190 (1978). The express legislative determination to give tax claims priority over the claims of other creditors in bankruptcy is manifestly inconsistent with petitioner's assertion that Congress determined, *sub silentio*, to treat tax claims less favorably when litigated in bankruptcy than when litigated outside of bankruptcy.

Petitioner's basic premise is that the burden of proof should be allocated to the government on a tax claim in bankruptcy court in order to treat the government like "[e]very other creditor who files a claim in a bankruptcy estate" (Pet. Br. 29). In making that assertion, however, petitioner fails to confront the fact that the validity of *any* creditor's claim in bankruptcy court—whether the creditor is a taxing authority or a non-governmental entity—is governed by the substantive rules of *non*-bankruptcy law. When, as with tax claims,

the rules of substantive non-bankruptcy law place the ultimate burden of proof on the debtor *outside* of bankruptcy, the debtor or trustee continues to shoulder that burden of proof in bankruptcy cases.

It is, of course, the ordinary rule that the claimant—either inside or outside of bankruptcy—bears the ultimate burden of proof. This is simply an application of the ordinary rule that a plaintiff generally bears the burden of proving his claim. But, when the substantive rule of non-bankruptcy law places the burden of proof on the defendant rather than the plaintiff, courts have recognized that the party *objecting* to the claim in bankruptcy must then bear the ultimate burden of proof in the bankruptcy case. As the Amici States have explained in detail (Amici States Br. Supporting Cert. at 9-11), the burden of proof is routinely assigned to the debtor in bankruptcy cases in *non*-tax contexts in which applicable non-bankruptcy law assigns that burden to the party in the debtor's position. See, *e.g.*, *In re Unioil, Inc.*, 962 F.2d 988, 994 (10th Cir. 1992) (burden of proving accord and satisfaction rests on the debtor as an affirmative defense); *In re Woehr*, 121 B.R. 743, 746-747 (N.D. Tex. 1990) (burden of proving debt is usurious rests on the debtor), aff'd, 957 F.2d 867 (5th Cir. 1992); *In re Andover Togs, Inc.*, 231 B.R. 521, 530 (Bankr. S.D. N.Y. 1999) (burden of proving laches); *In re Farris*, 194 B.R. 933, 936-937 (Bankr. E.D. Pa. 1996) (burden of proving Truth in Lending Act violation).

Contrary to petitioner's contention (Pet. Br. 18-20, 27), it is thus not a special dispensation to taxing authorities to apply the rules established under substantive non-bankruptcy law in allocating the burden of proof in bankruptcy cases. Instead, it would be a distinctive discrimination *against* taxing authorities to refuse to apply in bankruptcy cases the burden of proof

rules established under substantive non-bankruptcy law which govern the adjudication of such claims outside of bankruptcy court. Under our self-reporting systems of state and federal taxation, taxing authorities are obviously not in a position comparable to that of ordinary commercial creditors whose claims typically are based on transactions they had with the debtor that would be reflected in the creditors' own records. The practical realities of achieving fair resolution of tax disputes do not change merely because the issue arises in bankruptcy proceedings.

4. Petitioner asserts (Pet. Br. 10-15, 19-20) that, prior to the enactment of the Bankruptcy Code of 1978, the decisions of this Court in *City of New York* v. *Saper*, 336 U.S. 328 (1949), and *Nicholas* v. *United States*, 384 U.S. 678 (1966), had led the "vast majority of lower courts adjudicating objections to tax claims" (Pet. Br. 13) to place the ultimate burden of proof on the taxing authority. Petitioner contends that, if Congress wished to change this assertedly "established" law, it would have done so explicitly (Pet. Br. 19). Neither the decisions of this Court in *Saper* and *Nicholas*, nor the "vast majority" of lower court decisions, however, support petitioner in this case.

a. In *Saper*, this Court addressed whether the tax claim of the City of New York bore interest to the date the bankruptcy commenced or, instead, to the subsequent date on which the claim was paid. Prior to 1938, a number of courts had held that the claim of a taxing authority bears interest to the date of payment. 336 U.S. at 333. Congress had generally provided by statute, however, that interest would be allowed on bankruptcy claims only to the date the bankruptcy commenced. *Id.* at 330. The City nonetheless asserted that, by generally disallowing interest after the bankruptcy commenced, Congress had not intended to disturb the preexisting decisions that allowed interest on tax claims to the date of payment. *Ibid.* This Court rejected that contention because the statutory provision that generally disallowed interest on claims after commencement of the bankruptcy "contain[ed] no provision * * * allowing an exception in favor of tax claims." *Ibid.* It was in this specific context that this Court made the statements on which petitioner seeks to rely (Pet. Br. 12, 27): (i) that the enactment of amendments to the Bankruptcy Code in the Chandler Act of 1938, ch. 575, 52 Stat. 840, had "assimilated taxes to other debts for all purposes including the denial of post-bankruptcy interest" and (ii) that the Bankruptcy Code "requires governmental claims to be proved in the same manner and within the same time as other debts * * *." 336 U.S. at 332.

Neither of these isolated quotations from the decision in *Saper* has relevance to the present case. Indeed, petitioner has significantly misinterpreted the quoted text. When the Court referred to governmental claims being "proved in the same manner and within the same time as other debts" (336 U.S. at 332), the Court was *not* describing the method of proving a claim on the merits. Under the terminology employed under the Bankruptcy Act, prior to enactment of the Bankruptcy Code of 1978, a debt was "proved" in the sense described in *Saper* by the submission of a timely "proof of claims * * * under oath, in writing and signed by a creditor." 11 U.S.C. 93(a) (1939). Under Section 58(d) of the Bankruptcy Act, as amended in 1938, "[c]laims which have been duly proved" in this sense were to "be allowed * * * unless objection to their allowance shall be made by parties in interest * * * ." 11 U.S.C. 93(d) (1939). Thus, under the Bankruptcy Act terminology,

even when a claim was "proved" by the filing of a timely, verified "proof of claim," it was to be "allowed" upon objection only if the court thereafter determined that it was a valid and enforceable claim on the merits. See J. Moore, *Moore's Bankruptcy Manual* § 57, at 148 & n.1 (1939); 3A *Collier on Bankruptcy* ¶ 63.05 (14th ed. 1975). The ultimate burden of persuasion was simply not relevant to whether a claim was "proved" under the terminology employed in the Bankruptcy Act. The burden of persuasion became relevant only in determining whether a "proved" claim, to which objection had been made by a party in interest, would be "allowed" on the merits.[4] See 11 U.S. C. 93(d) (1939); J.

[4] Petitioner plainly errs in relying (Pet Br. 11) on the portion of the legislative history of the Chandler Act which states that governmental claims would "be subjected to the same requirements as other claims" under that Act. S. Rep. No. 1916, 75th Cong., 3d Sess. 5 (1938). In the Chandler Act, Congress for the first time required governmental claims to be filed and "proved" in the same manner as other bankruptcy claims. See 11 U.S.C. 93(n) (1939); J. Moore, *supra*, at 148 & n.1. The claims of the United States had formerly not been subject to the same time limits and "proof of claim" requirements imposed on other creditors. *Ibid.* ("[p]rovision in respect to government claims was added to avoid decisions which had held that the time limit [on submitting claims] was not binding upon the sovereign"). The language that petitioner quotes from the 1938 Senate report simply describes the newly adopted requirement that there be a timely "proof of claim" for government claims. The Senate Report generally agreed with the House proposal that, with respect to the requirement that "claims must actually be filed within the bar time," "governmental claims should be subject to the same requirements as other claims." S. Rep. No. 1916, *supra*, at 5. The Report went on to state, however, that this time "limitation should be tempered by [a] provision for extension, for the reason that it is sometimes difficult for the Government to prepare and present its claims within a fixed time." *Ibid.* By thus subjecting governments to the

Moore, *supra*, at 147. See also *In re Johns-Manville Corp.*, 57 B.R. 680, 686-687 (Bankr. S.D. N.Y. 1986).

In proper context, the quoted passages from *Saper* simply represent a straightforward application of the settled rule that, when Congress expressly and comprehensively addresses a particular subject, exceptions to the legislative rule are not lightly to be implied. 336 U.S. at 330. In the present case, unlike in *Saper*, it is undisputed that Congress has *not* expressly provided a general rule detailing the burden of proof for tax claims or other types of claims in bankruptcy. See Pet. Br. 19 (acknowledging "Congress' silence on the applicable burden of persuasion in claim objection proceedings"). Instead, each claimant comes to bankruptcy court with rights to be determined under substantive non-bankruptcy law. One of the substantive rights that governs the tax claim of the State of Illinois is the right to have the ultimate burden of proof placed on the party objecting to the claim. See page 11, *supra*. Since Congress has not provided a different rule, that substantive rule of state law governs the determination of the State's claim in bankruptcy court. See *ibid.*

b. The decision of this Court in the *Nicholas* case is similarly inapposite. In *Nicholas*, the Court again addressed the right of a taxing authority to receive interest on its claim in a bankruptcy case. In the circumstances of that case, the Court held that interest on taxes incurred after the commencement of a reorganization but before the conversion of that proceeding to a liquidation was not an administrative expense of

requirement of a timely "proof of claim," Congress did not purport, even by implication, to address the proper allocation of the burden of proof for determining whether a claim is ultimately to be "allowed" against the estate.

the bankruptcy estate. It was in this context that the Court made the statement in a footnote quoted by petitioner (Pet. Br. 12) that *Saper* "reflected an assimilation of tax debts to the status of other debts in bankruptcy." 384 U.S. at 682 n. 10. The fact that interest on tax debts was treated like interest on "other debts in bankruptcy" has no bearing on the question presented in this case.

c. Petitioner errs in asserting that, prior to the enactment of the Bankruptcy Code of 1978, "the vast majority of lower courts" (Pet. Br. 13) held that the taxing authority bears the burden of proof in establishing its claim. In the first place, none of the cases referred to by petitioner (Pet. Br. 13-15) suggests that either *Saper* or *Nicholas* is relevant to this issue. Moreover, petitioner cites only one decision of a court of appeals as support for its position. *United States* v. *Sampsell*, 224 F.2d 721 (9th Cir. 1955).[5] By contrast, two other courts of appeals had held under the Bankruptcy Act that the burden of proof rests on the party who objects to the tax claim. *In re Uneco, Inc.*, 532 F.2d 1204, 1207 (8th Cir. 1976); *Paschal* v. *Blieden*, 127 F.2d 398, 401-402 (8th Cir. 1942); *In re Lang Body Co.*, 92 F.2d 338, 341 (6th Cir. 1937), cert. denied *sub nom. Hipp* v. *Boyle*, 303 U.S. 637 (1938).

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[5] Petitioner erroneously cites (Pet. Br. 14) *Fiori* v. *Rothensies*, 99 F.2d 922 (3d Cir. 1938), and *Dickinson* v. *Riley*, 86 F.2d 385 (8th Cir. 1936), in this context. Neither of those cases addresses the proper allocation of the ultimate burden of proof. Petitioner also errs in citing (Pet. Br. 15) *In re Highway Construction Co. of Ohio*, 105 F.2d 863 (6th Cir. 1939), which ruled against the government claim simply because it had been rebutted by the debtor and the government had failed "to introduce evidence to establish its claim." *Id.* at 866.

The suggestion of petitioner (Pet. Br. 15-16, citing *Dewsnup* v. *Timm*, 502 U.S. 410, 419 (1992)) that Congress should be understood to have adopted "pre-Code practice" thus lacks any force in this case. No conclusion about legislative intent can be drawn from this conflicting precedent.

5. Petitioner incorrectly relies on the legislative history of the Bankruptcy Code of 1978. As petitioner notes (Pet. Br. 17), the House and Senate reports on that Act both state that a proof of claim constitutes "prima facie evidence of the claim" and that, in the absence of an objection by a party in interest, the claim is to be "allowed." H.R. Rep. No. 595, *supra*, at 352; S. Rep. No. 989, 95th Cong., 2d Sess. 62 (1978). The legislative reports further state that "[t]he burden of proof on the issue of allowance is left to the Rules of Bankruptcy Procedure." *Ibid.* Congress thus manifestly declined itself to adopt a general provision addressing the "burden of proof on allowance" in bankruptcy cases.

Petitioner incorrectly contends (Pet. Br. 17) that this Court adopted such a burden of proof rule by issuing Rule 3001(f) of the Bankruptcy Rules. That Rule specifies that (Fed. R. Bankr. P. 3001(f)):

> A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

That Rule, by its very terms, does no more than adopt the accepted proposition reflected in the legislative history that a properly filed proof of claim is "prima facie evidence" of the claim. Nothing in that Rule purports to establish an overriding, ultimate burden of proof rule to apply when the "prima facie" case is disputed by an objection in bankruptcy court. As the

Fourth Circuit explained in *In re Landbank Equity Corp*, 973 F.2d at 269, the "prima facie evidence" rule stated in Bankruptcy Rule 3001(f) is simply a procedural mechanism for facilitating administration of the bankruptcy estate. It places the burden of coming forward with some evidence to dispute the claim on the party who contests it; it does not address the question of who bears the ultimate burden of persuasion once the "prima facie" case has been placed at issue by the objecting party.[6] *Ibid.* Accord *In re Yoder Co.*, 758 F.2d 1114, 1119-1120 (6th Cir. 1985).

In this regard, Bankruptcy Rule 3001(f) parallels (and is subject to) Rule 301 of the Federal Rules of Evidence.[7] That rule of evidence, which applies to all cases in bankruptcy court, specifies that "*a presumption* imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but *does not shift* to such party *the burden of proof in the sense of the risk of nonpersuasion*, which remains throughout * * * upon the party on whom it was originally cast." Fed. R. Evid. 301 (emphasis added).

6. Petitioner also errs in suggesting (Pet. Br. 26, 29) that, because bankruptcy courts originated as courts of equity, they may disregard the substantive rules governing burden of proof established under non-bankruptcy law. As the court of appeals stated in this case

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[6] Moreover, because the allocation of the ultimate burden of proof is a part of the substantive rights of the claimant (see page 10, *supra*), the Bankruptcy Court rules could not lawfully "abridge, enlarge, or modify [that] substantive right." 28 U.S.C. 2075.

[7] The Federal Rules of Evidence are expressly applicable to all proceedings conducted in bankruptcy court. See Fed. R. Evid. 1101(a).

(Pet. App. 9a, quoting *In re Lapriano*, 909 F.2d 221, 224 (7th Cir. 1990)), "[b]ankruptcy is not a 'free-for-all equity balancing act.'" The equitable powers of a bankruptcy court "must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197, 206 (1988). As this Court stated in *Butner* v. *United States*, 440 U.S. 48, 56 (1979), "undefined considerations of equity provide no basis" for departing from substantive rules establishing a claimant's rights under non-bankruptcy law. Absent some "overruling federal law," the bankruptcy court may not alter the substantive rights of creditors established under non-bankruptcy law. *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. at 161. See also *United States* v. *Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986); *In re Morristown & Erie R.R.*, 885 F.2d 98, 100 (3d Cir. 1989); *Bird* v. *Carl's Grocery Co. (In re NWFX, Inc.)*, 864 F.2d 593, 595 (8th Cir. 1989). As this Court stated in *United States* v. *Noland*, 517 U.S. 535, 543 (1996) (quoting *In re Ahlswede*, 516 F.2d 784, 787 (9th Cir.), cert. denied, 423 U.S. 913 (1975)), "the [equity] chancellor never did, and does not now, exercise unrestricted power to contradict statutory or common law when he feels a fairer result may be obtained by application of a different rule." The Fourth Circuit correctly concluded in *In re Landbank Equity Corp.*, 973 F.2d at 271, that the fact that a bankruptcy court is a court of equity "does not confer on the court unlimited authority to ignore plain statutory requirements and to alter the substantive rights of the parties."

Placing the burden of proof on the taxing authority in bankruptcy cases would improperly disregard the substantive rights established under state and federal law. Congress did not itself "mean[] to shift the burden of proof from taxpayer to tax collector" in bankruptcy

cases. Pet. App. A11. Bankruptcy courts may not "contradict [the] statutory or common law" placing the burden of proof on taxpayers by invoking an "unrestricted power" to achieve what the court may consider to be "a fairer result" (*United States* v. *Noland*, 517 U.S. at 543). The court of appeals correctly held that the ultimate burden of proof for tax claims rests on the taxpayer as a matter of substantive law—regardless whether that claim is adjudicated inside, or outside, of bankruptcy.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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